IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.2414 OF 2004

Mrs. Sushma Shrikrishna Kulkarni ..Petitioner

Vs.

State of Maharashtra & Ors. ..Respondents

Mr.A.M.Joshi for Petitioner
Mrs.S.S.Bhende, A.G.P. for Respondent nos.1 to 3
Mr. N.V. Bandiwadekard for Respondent nos.5 to 6

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 8TH FEBRUARY, 2005.

P.C.

. Petitioner was only appointed for a period of from 18th March, 1987 till 26th October, 1988 as a special case. Thereafter there has been no further appointment though petitioner was selected to some other post and had been issued a letter of appointment but that was cancelled as it was found that the selection board had not taken into consideration that the petitioner is over aged.

2. Petitioner had filed a suit being Special Civil Suit No.1030 of 1998 for various reliefs including declaratory relief that she is entitled to continuity of service amongst others against Respondent nos.5 and 6 to the present petition. The contention of the Petitioner in the suit was that the Government had issued G.R., based on which the

Petitioner was eligible to be absorbed with some other reliefs. The suit came to be dismissed on the ground of want of jurisdiction on 5th February, 2003.

3. It is after this that the Petitioner filed present petition. The relief sought for the petitioner are to allow the petitioner to join her services as an employee of Zilla Parishad in some other school run by the said Zilla Parishad. The petitioner had already crossed the age of superannuation when she was supposed to be appointed as teacher. That relief cannot be granted. The second relief is to direct the petitioner to be absorbed. That relief also cannot be granted as she was not in regular service.

. The last relief is that the petitioner be paid pay and allowances from 1991. On behalf of the petitioner it is sought to be contended that merely because the petitioner filed a suit and had proceeded with the suit that should not stand in the way of this Court entertaining the Writ Petition on the ground of vaiver. It is pointed out that this aspect was considered by the Court when it passed the order dated 26th August, 2004. It is also pointed out that considering the G.R. nothing is stated that only permanent teachers should be

absorbed and not those teachers who are over aged. It is pointed out that the respondents are not appointing her, even though selected and this Court should exercise its extra ordinary jurisdiction on the facts of the present case.

3. On behalf of the Respondents an affidavit has been filed. In the said affidavit it is pointed out that the petitioner though was over aged as a special case was granted provisional permission for teaching for a period from 18th March, 1987 till 26th October, 1988. Her appointment came to an end on 26th October, 1988 though the approval is dated 8th June, 1989. The petitioner was never appointed as a regular employee. It is pointed out that reliance is placed in the letter dated 15th November, 1990 . In fact the Government Resolution is applicable to regular employees and not to employees appointed for a specific period, nor to teachers whose appointment has come to an end. It is also pointed out that the Respondents had made several efforts for appointing the petitioner in Ashram School at Daund, which was refused. It is also pointed out that she could not have been appointed as she was over aged at the time of selection, by the Selection Committee.

4. In the instant case as seen from the record

of the respondents, the appointment was only for a period from 18th March, 1987 to 26th October, 1988. No documentary evidence has been produced to show that there was any approved appointment after the said period. If the Management continued to appoint the petitioner without approval from the Government then, the respondents cannot be burdened with those acts of the Management. The petitioner also cannot claim benefits of the resolution dated 15th November, 1990 as she ceased to be in service from 26th October, 1988. It is not possible to accept the contention that persons who have been appointed for temporary periods even though that appointment is not regular are entitled to be absorbed. The first contention must be therefore, rejected.

5. In so far as other contention is concerned the petitioner at the time of selection was over aged. There was no proviso for regularisation and secondly no new appointment could have been issued to the petitioner. The respondent therefore, rightly did not agree to the prayer of the petitioner.

6. Lastly if it may be mentioned that the petitioner has not worked after 1988 in any of the schools. Petitioner has filed the Petition in 2003. This is therefore, not a fit case to this Court to

exercise its extra ordinary jurisdiction. The order dated 26th August, 2004 by this Court was before this Court had benefit of the affidavit dated 23rd September, 2004.

7. Considering the above no interference is called for. Petition is rejected.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)